

PROSECUTING ATTORNEYS:

Prosecuting Attorneys may be reimbursed for actual and necessary traveling expenses in the investigation of crimes and the county court is authorized to provide for such expenses.

MAGISTRATES:

Magistrate shall set salaries of his clerk, deputy clerks and employees.

January 23, 1947

F I L E D

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Honorable James L. Paul
Prosecuting Attorney
McDonald County
Pineville, Missouri



Dear Sir:

We hereby acknowledge receipt of your letter of recent date requesting an opinion of this department, reading as follows:

"As Prosecuting Attorney elect of this County, I have had some questions submitted to me, and I would like to have your opinion before rendering my opinion after January 1st.

"Can the County Court set any salary it desires so long as it does not exceed the limit provided for by statute for clerks in the Magistrates' Courts in the Counties of the fourth class?

"Are the County Courts authorized to allow the Prosecuting Attorney actual mileage and expenses incurred in the investigation of any crime committed in his County?"

In answer to your first question we direct your attention to Section 21 of Senate Bill 207 of the 63rd General Assembly, which reads in part as follows:

"In all counties each magistrate shall by an order duly made and entered of record appoint and fix the salary of a clerk of his court and may appoint such deputies and employees as may be necessary for the proper dispatch of the business of his court and fix their salaries at such sum as in his discretion may seem proper. ***"

It is noted that McDonald County in 1940 had a population of 15,749 and an assessed valuation in 1944 of \$6,313,825. In Section 22 of Senate Bill 207, wherein a limitation is placed on the above salaries fixed by the magistrate, it is provided in part as follows:

"* * * The total amount that may be paid by the state in any one year for such clerks, deputy clerks and employees of the magistrate courts in the different counties shall not exceed the following sums:

"* * * in all counties now or hereafter having a population of more than 11,000 inhabitants but not more than 17,000 inhabitants with an assessed valuation of \$11,000,000 or less, the sum of \$1200; *"

Therefore, the magistrate shall fix the salaries of his clerk, deputy clerks and employees within the limits provided for in Section 22 of Senate Bill 207 of the 63rd General Assembly.

In answer to your second question, we have found no specific statutory authority authorizing the county court to allow mileage and actual expenses incurred by the prosecuting attorney for the investigation of crimes. However, it is our opinion that a situation of this nature is distinguishable from those cases announcing the rule that officials may not receive any other compensation than that authorized by law. Maxwell v. Andrew County, 146 S. W. (2d) 621; Smith v. Pettis County, 136 S.W. (2d) 282.

In the case of Rinehart v. Howell County, 153 S. W. (2d) 381, the court held that the prosecuting attorney could be reimbursed for reasonable sums paid for necessary stenographic services in addition to that authorized by law. In arriving at this decision the court stated, at l. c. 382-383:

"* * * The instant case was submitted on the theory, as disclosed by the stipulated facts and undisputed testimony, that the outlays, as contradistinguished from income, were bona fide, reasonable and actual expenditures for indispensable expenses of the office

by respondent (not on the theory that compensation to an officer was involved) and falls within the ruling in Ewing v. Vernon County, 216 Mo. 681, 695, 116 S.W. 518, 522(b). That case quoted with approval a passage from 23 Am. and Eng. Ency. Law, 2d Ed., 388, to the effect that prohibitions against increasing the compensation of officers do not apply to expenses for fuel, clerk hire, stationery, lights and other office accessories and held a recorder entitled to reimbursement for outlays for necessary janitor service and stamps, stating: 'Fees are the income of an office. Outlays inherently differ. An officer's pocket in no way resembles the widow's cruse of oil, Therefore those statutes relating to fees, to an income, and the decisions of this court strictly construing those statutes, have nothing to do with this case relating to outgo.' (Emphasis ours.)

In arriving at this conclusion the court pointed out that in certain counties the General Assembly has specifically provided that stenographic services should be furnished a prosecuting attorney. We have the same situation here in that Section 12986, R. S. Mo. 1939, provides for expenses to be paid to the prosecuting attorneys in larger counties for the investigation of crimes, but, as we have stated before, there is no provision for the payment of such expenses in the smaller counties. In discussing this situation, the court stated at l. c. 383:

"Appellant points out that * * * the General Assembly authorized and established salaries for stenographic services to prosecuting attorneys in the larger counties of the State, did not provide for like services in counties of the population of Howell county, and contends for the application of the maxim *expressio unius est exclusio alterius*.
* * * * *

"Appellant's statutory citations constitute legislative recognition of the propriety of expenditures for stenographic

services in the discharge of the present-day duties of prosecuting attorneys in the communities affected--an approved advance in proper instances for the administration of the laws by county officials and the business affairs of the county and for the general welfare of the public. Such enactments, in view of the constitutional grant to county courts, should be construed as relieving the county courts in the specified communities from determining the necessity therefor and, by way of a negative pregnant, as recognizing the right of county courts to provide stenographic services to prosecuting attorneys in other counties when and if indispensable to the transaction of the business of the county, and not as favoring the citizens of the larger communities to the absolute exclusion of the citizens of the smaller communities in the prosecuting attorney's protection of the interests of the state, the county and the public. * * *"

The Rinehart case is authority, we think, for the conclusion that if a county court determines that the investigation of crimes is necessary for the proper conduct of the duties of the office of the prosecuting attorney, mileage and expenses can be paid for by the county court out of the county revenue, and, further, that if such expenses are indispensable to the proper functioning of the prosecuting attorney's office, and the county court refuses to provide same and the prosecuting attorney is compelled to provide it himself, then said prosecuting attorney can recover from the county his reasonable and actual expenses. It should be noted that what is a bona fide, reasonable and actual expenditure is a matter of fact to be determined by the county court. However, if the prosecuting attorney is of the opinion the county court has acted arbitrarily in its determination and that he is obliged to make such investigations in order to properly carry on his office, and he does in fact carry on said investigations, then he may bring suit against the county to recover for his necessary expenditures in that regard, but the duty would be upon him in such an action to prove that the investigations were indispensable to the proper conduct of his office.

Conclusion

Therefore, it is the opinion of this department that the magistrate shall set the salaries of his clerk, deputy clerks

and employees within the limits provided in Section 22 of Senate Bill 207 of the 63rd General Assembly.

It is further our opinion that (1) mileage and actual expenses incurred in the investigation of crimes may be provided by the county court for a prosecuting attorney if the county court finds as a fact that said expenses for the investigations are necessary for the proper conduct and administration of the affairs of said office, and (2) that if a county court refuses to provide mileage and actual expenses for the investigation of crimes for the prosecuting attorney, then, if in fact they are indispensable to the proper conduct and the administration of the affairs of his office and he does carry on said investigations, he may recover his actual and reasonable expenses for same.

Respectfully submitted,

PERSHING WILSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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